U.S. Department of J· .ce
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision the Board of Immigration Appeals
INDEX

File: A36 604 519 - Houston

Date:
APR - 9 1999

In re: JOSE MANUEL MERAZ-HERRERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gino M. Mesa, Esquire
7457 Harwin, Suite 298
Houston, Texas 77036

ON BEHALF OF SERVICE: Michael R. Leppala
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

APPLICATION: Cancellation of removal

The respondent has appealed from the Immigration Judge's October 1, 1998, decision finding that the respondent was subject to removal under section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i), and ineligible for relief from removal because he had previously received a waiver of deportation under former section 212(c) of the Act. We will dismiss the appeal.

The respondent admitted the factual allegations in the Notice to Appear, but denied removability. Specifically, the respondent admitted that he was convicted on August 20, 1997, and again on July 15, 1998, of assault-bodily injury offences, that he was not married to the person he assaulted, and that they were cohabiting (Tr. at 14). The conviction records reflect that the respondent was convicted twice for assaulting a woman, and in each case the court made an affirmative finding of "family violence" under Texas law (Exh. 4 at D-E).

On appeal, the respondent argues that the Immigration Judge erred in finding his convictions for assault supported the domestic violence charge under section 237(a)(2)(E)(i) of the Act. He argues that he was not married to the victim of the assaults, and that there is insufficient evidence

to establish that she was in a relationship with him that was protected under Federal or State law. The respondent, who had previously been granted relief under the now repealed section 212(c) of the Act, also contests the Immigration Judge's conclusion that he was statutorily ineligible for cancellation of removal and the Immigration Judge's failure to consider the relief of voluntary departure.

The Service argues that because the respondent's assault convictions contain affirmative findings of family violence and because the respondent conceded that he cohabited with the victim, "the immigration court properly found the respondent removable pursuant to section 237(a)(2)(E)(i) of the Act as someone convicted of domestic violence." The Service notes that Texas family violence laws protect persons from acts of violence by family or household members against another member of the family or household and includes persons living together in the same household regardless of whether they are related to each other. See Id.; Texas Family Code sections 71.004(1) and 71.005. The Service also contends that as an alien whom the Immigration Court has previously granted relief under section 212(c) of the Act, the respondent is ineligible for cancellation of removal pursuant to section 240A(a) of the Act and does not warrant voluntary departure.

Section 237(a)(2)(E)(i) of the Act provides that, "Any alien who at any time after entry is convicted of a crime of domestic violence, . . . , is deportable." This section also defines the term "crime of domestic violence" as follows:

> [A]ny crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabitating with or has cohabitated with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offence occurs, or by any individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

Section 237(a)(2)(E)(i) of the Act.

The Texas Family Code defines family violence as:

> [A]n act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

Texas Family Code § 71.004(1). Under Texas law, a "household" is defined as "a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other." Texas Family Code § 71.005.

We are unpersuaded by the respondent's argument that there is insufficient evidence on the record before us to establish that he is deportable under section 237(a)(2)(E)(i) of the Act. We find that the Service has demonstrated by clear and convincing evidence that the respondent has been convicted of two separate domestic violence crimes and is removable as charged. Without having to go beyond the "four corners" of the conviction records in this case, those records include affirmative findings by the criminal court that the respondent's assault convictions involved "family violence" under the laws of Texas. Moreover, the respondent admitted that he cohabited with the victim of his assaults and solely argued before the Immigration Judge that they were not married, which is not determinative. Section 237(a)(2)(E)(i) specifically includes crimes of violence against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State. The respondent's assault convictions were clearly such crimes under the laws of Texas.

The respondent's claim that he is not statutorily barred from cancellation of removal is without merit. Section 240A(c)(6) clearly provides that an alien, such as the respondent, is ineligible for cancellation of removal relief because he is "an alien who has been granted relief under [former] section 212(c)." Section 240A(c)(6) of the Act.

Additionally, the respondent argues on appeal that the Immigration Judge failed to consider his potential eligibility for voluntary departure relief under section 240B(a) of the Act. However, the respondent did not apply for voluntary departure prior to the completion of the proceedings before the Immigration Judge, and has not established his eligibility for such relief. Accordingly, the respondent's appeal will be dismissed.

ORDER: The appeal is dismissed.

FOR THE BOARD